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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,105	01/14/2004	Robert P. Letendre	4900.001	2919
7590 01/24/2007 David P. Lhota Stearns Weaver Miller, et al. Suite 1900 200 East Broward Boulevard Fort Lauderdale, FL 33301			EXAMINER SPISICH, MARK	
			ART UNIT 1744	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/24/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/757,105

Applicant(s)

LETENDRE, ROBERT P.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) 6, 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the species of Figure 2 in the reply filed on 27 December 2006 is acknowledged. The traversal is on the ground(s) that there is a generic claim and that all of the species are sufficiently related. This is not found persuasive because the presence of a generic claim at this point of prosecution has not bearing at all on an election of species. **IF a generic claim were to be deemed allowable, THEN** the species requirement would be withdrawn and the proper dependent claims from the allowed generic claim reinstated. Species are essentially by definition embodiments or modifications of a similar inventive concept usually sharing at least some structure in common. The primary reason for an election requirement is so that the issue(s) will be reduced IF a generic claim is not allowed and the prosecution then concentrates on a specific one of the disclosed embodiments. The only proper manner of traversing a species requirement is to go on record as stating that the identified species are not patentably distinct from each other. Doing so would result in an admission by applicant that they are obvious variants of one another.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 6, 15 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 27 December 2006. Applicant had indicated that these claims read on the elected embodiment (Figure 2). The elected embodiment, Figure 2, would only work

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with a rotating adjustment member and as such the sliding adjustment member (with the mount lever) would not read on the elected embodiment. Applicant should not interpret an election of species at the beginning of prosecution as an immediate and permanent withdrawal of specific dependent claims. If, for example, a generic claim(s) is ever deemed to be allowable, then any proper dependent claim(s) drawn to the various species (which include all of the generic claim limitations) would be reinstated and also allowed.

Drawings

3. The drawings are objected to because (1) the label "Fig. 1" should be removed in that each of the four figures on that sheet are distinct views with their own figure label; (2) Fig 1A is an exploded view which should be bracketed; (2) the label "Fig. 2" should be removed as well for the same reason given above; (3) there are a number of different figures on the second sheet which should be individually labeled; (3) the same is true with figure 3 (also, there are no figs 3A-3C to correspond to page 4 of the specification; (4) the heading "Fig. 4" should be removed in that each of the three figures on that sheet already have a separate label; (5) the same is true for figure 5 and ALL of the remaining figures (each figures should be individually labeled). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

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canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5)

because they do not include the following reference sign(s) mentioned in the description: #s 11, 17 (and 17a-17c), 14a-14e, 32a, 32b, 21a-21h, 31, 51 and 52.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Segments" (claim 5, line 2) lacks antecedent. Applicant should review the claims for any additional informalities.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3,5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4,202,312. '312 discloses a toothbrush comprising a handle (10) with a flexible brush mount (13) with bristles (12) as well as an adjustment means (14,15) and drive means (16) for adjusting the shape of the brush surface (see the three configurations of figure 1).

8. Claims 1-5 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Yue (USP 6,357,073). The patent to Yue discloses a toothbrush (10) comprising a handle (11) as well as a flexible mount (12), adjustment means (15,16) and drive means (17,18) for adjusting the shape of the brush surface (figs 1-3).

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9. Claims 1,2,7,8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glassman (USP 1,688,581). The patent to Glassman discloses a toothbrush comprising a handle (5), flexible mount (12) with bristles, adjustment means (18) as well as a drive means (14,16) for adjusting the brush surface.

10. Claims 1-3,5,7,8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Stansbury, Jr. (USP 5,259,083). The patent to Stansbury discloses a toothbrush (20) comprising a handle (22), flexible mount including a plurality of interconnected brush segments, adjustment means (45a-45f) and a drive means (42) constantly altering the shape of the brush surface.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of the cited patents are pertinent to toothbrushes with means for alter the brush surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark Spisich
Primary Examiner
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MS